



CITY OF SAN JOSÉ
HOUSING AND COMMUNITY DEVELOPMENT
COMMISSION
SPECIAL MEETING

December 5, 2016 AT 5:45 PM

SAN JOSÉ CITY HALL

200 E. SANTA CLARA ST.

LOCATION: WING ROOMS 118-120

SAN JOSÉ, CA 95113



Mike Graves, Chairperson
Melissa Medina, Vice Chair

Commissioners

Michael Fitzgerald

Martha O'Connell

Lee Thompson

Bob Gill

Gary Prideaux

Andrea Wheeler

Davlyn Jones

Alex Shoor

Members of the public who wish to make comments on any item on the Agenda, or any other item related to the Commission's purview, may be given two (2) minutes. Please note that: (1) the Commission will only be able to discuss comments to items on the Agenda; and (2) the time schedule shown below is approximate and intended only to notify the Commission of the approximate amount of time staff expects each item might take, and items may be heard before or after the times shown.

TIME*	AGENDA ITEM
5:45	(a) Call to Order/Orders of the Day
5:50	(b) Introductions
5:55	(c) Chair's Report (M. Graves, Chair)
6:00	(d) Input on Fully Modified Apartment Rent Ordinance, Ellis Act Ordinance, and the Anti-Retaliation and Protection Ordinance (Housing Staff) ACTION: Provide input to the Housing Department on policy questions associated with the development of the fully modified Apartment Rent Ordinance, Ellis Act Ordinance and the Anti-Retaliation and Protection Ordinance.
7:00	(e) Open Forum
7:05	(f) Adjournment

**HCDC meetings start at 5:45 pm. All other times listed for the specific agenda topics are estimates. Actual start times may deviate from the estimate provided.*

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the City of San Jose Housing Department, 200 E. Santa Clara St., 12th Floor, San Jose, CA 95113 at the same time that the public records are distributed or made available to the legislative body.

Para residentes que hablan español: Si desea mas información, favor de llamar a Theresa Ramos al

To request an accommodation for this meeting or an alternative format for any related printed materials, please contact Robert Lopez at 408-975-4402 or Robert.Lopez@sanjoseca.gov or 408-294-9337 (TTY) as soon as possible, but at least three business days before the meeting.

408-975-4475.

Riêng đối với quý vị nói tiếng Việt : Muốn biết thêm chi-tiết, xin vui lòng tiếp xúc với Therese Tran, Đ.T. 408-793-5349.

對於說華語的居民: 請電 408-975-4450 向 Ann Tu 詢問詳細事宜。說粵語的居民則請撥打 408-975-4425 與 Yen Tiet 聯絡。

Para sa mga residente na ang wika ay tagalog: Kung kinakailangan pa ninyo ng inpormasyon, tawagan si Arlene Silverio sa 408-793-5542. Salamat Po.

***You can access the agenda and all attachments electronically at the Housing & Community Development Commission website at : <http://www.sanjoseca.gov/index.aspx?NID=1262>



Memorandum

TO: HOUSING & COMMUNITY
DEVELOPMENT COMMISSION

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: November 28, 2016

Approved

Date

**SUBJECT: INPUT ON FULLY MODIFIED APARTMENT RENT ORDINANCE,
ELLIS ACT ORDINANCE AND THE ANTI-RETALIATION AND
PROTECTION ORDINANCE**

RECOMMENDATION

Provide input to the Housing Department on policy questions associated with the development of the fully modified Apartment Rent Ordinance, Ellis Act Ordinance and the Anti-Retaliation and Protection Ordinance.

BACKGROUND

On April 19th and May 10th the San José City Council directed staff to make substantial changes to the Apartment Rent Ordinance, as well as return to City Council with an Ellis Act Ordinance and an Anti-Retaliation & Protection Ordinance. On May 17th the City Council adopted an Interim Apartment Rent Ordinance, which implemented the Council-approved 5% annual allowable increase. The Interim Ordinance became effective on June 17th. The Interim Ordinance regulations were brought before the Housing & Community Development Commission on August 11th and September 8th. A list of major milestones completed to date is provided as **Attachment A**.

Three community meetings were convened to gather feedback on important policy and implementation questions of the three ordinances from property owners and tenants. These interactive meetings were designed to effectively solicit feedback on all three ordinances in one meeting through an interactive exercise.

- Monday, November 7: Cypress Community Center
- Monday, November 14: City Hall – Wing Rooms
- Wednesday, November 16: Bascom Community Center

The handout that was shared with participants at these meetings is provided as **Attachment B**.

ANALYSIS

In total, 16 tenants or tenant advocates and 42 property owners, managers or advocates attended the community meetings. Staff developed a series of multiple choice questions related to the implementation of each other three ordinances. Participants were asked to indicate their preferred answers to each question. Written responses offering additional considerations, alternatives, or further explanations were also welcomed for each question. The written comments are provided as **Attachment C** to this memo.

Apartment Rent Ordinance

The City Council directed the creation of a rent registry, the allowance of banking unused rent increases, and the creation of a limited cost pass-through process for major capital improvements. Staff focused questions on the different implementation models of the rent registry, banking, and the types of capital improvements that should qualify for the new pass-through program. The ARO questions and responses are provided below.

Question	Totals	
	Tenants	Owners
ARO Question 1: Which is more important to you?		
Banking + higher fees	1	6
No banking + lower fees	2	10
Easy registration	0	5
Review of rents	2	4
ARO Question 2: When should apartments be registered?		
Annually	4	8
Re-registration*	8	11
ARO Question 3: Do you prefer to use an online or paper registration form?		
Online	10	22
Paper	2	3
ARO Question 4: Which two strategies do you believe would be most effective for registration compliance?		
Late Fees	6	16
No rent increases	16	11
No banking	3	3
Temporary just cause	1	1
ARO Question 5: Which capital improvements are most important to you?		
Safety & Security	8	15
Seismic Retrofitting	1	3
ADA	3	3
Conservation	2	5
Major external systems	1	3
Major internal systems	3	7

*Re-registration occurs upon vacancy of a rental unit

Anti-Retaliation & Protection Ordinance

The City Council directed the creation of an Anti-Retaliation & Protection Ordinance (ARPO), which in certain circumstances could provide a tenant protection from no-cause terminations of tenancy. The questions presented to the public pertained to how and when the ARPO should apply, and what should be considered a cause for eviction.

ARPO Question 1: When should a tenant be provided with Good Cause protections?		
Tenant - Harassed	16	11
Housing Code violations	14	10
Owner violation of Ord.*	16	13
Failure to register	4	4
DV	1	2
ARPO Question 2: Please indicate the appropriate causes for eviction.		
Nonpayment of Rent	15	25
Substantial violation of lease	7	28
Caused or allowed damage	15	25
Illegal activity	6	21
Nuisance/threats	9	20
Illegal subletting	2	19
Refused landlord access to unit	1	11
Refusal to sign new lease	1	9
Substantial repairs to prop.	2	9
Owner move-in	1	20
ARPO Question 3: Should a tenant be required to notify an owner of a Code violation in writing first?		
Yes	10	57
No	13	5

*Owner violation of the ordinance would include a valid petition filed under the ARO

Ellis Act

The City Council directed staff to create a local ordinance implementing the Ellis Act, which creates a process for determining the process and requirements for the removal of rent stabilized apartments from the rental market. Many other cities with Ellis Act Ordinances also provide relocation benefits to tenants that are losing their housing.

Ellis Act Question 1: Which tenants should receive relocation benefits?		
All Tenants	14	11
Seniors (60+)	9	7
Families with kids	3	2
Disabled individuals	10	5
Tenants - Income qual.	10	14
Subtenants/not on lease	0	0

Ellis Act Question 2: Should some tenants receive additional benefits because they are more vulnerable?*		
All Tenants	4	7
Seniors (60+)	8	6
Families with kids	4	3
Disabled individuals	5	7
Tenants - Income qual.	6	12
Subtenants/not on lease	1	0
Ellis Act Question 3: What should a relocation package include?		
1st/Last Month Rent	12	11
Deposit	11	16
Packing/Moving	7	12
Rent differential	17	5
Flat fee/unlike apt.	1	2
Storage	0	1
Relocation assistance*	6	2
Hotel/motel	0	3

* Question/Response added after first meeting based on feedback received;
relocation assistance refers to services from a relocation consultant

PI: Post-it response

EVALUATION AND FOLLOW-UP

Additional meetings will be scheduled with ARO apartment owners and residents. The Ellis Act and Anti-Retaliation & Protection Ordinance drafts will be released for public review and comment in early 2017. The fully-modified Apartment Rent Ordinance will be released in mid-Spring for public review and comment. Additional community meetings will be held during the respective review periods. The ordinances will be brought to City Council before the end of the fiscal year. The ordinances will incorporate input from the community meetings, stakeholder meetings the December 5th HCDC meeting, and any future HCDC meeting covering these subjects.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

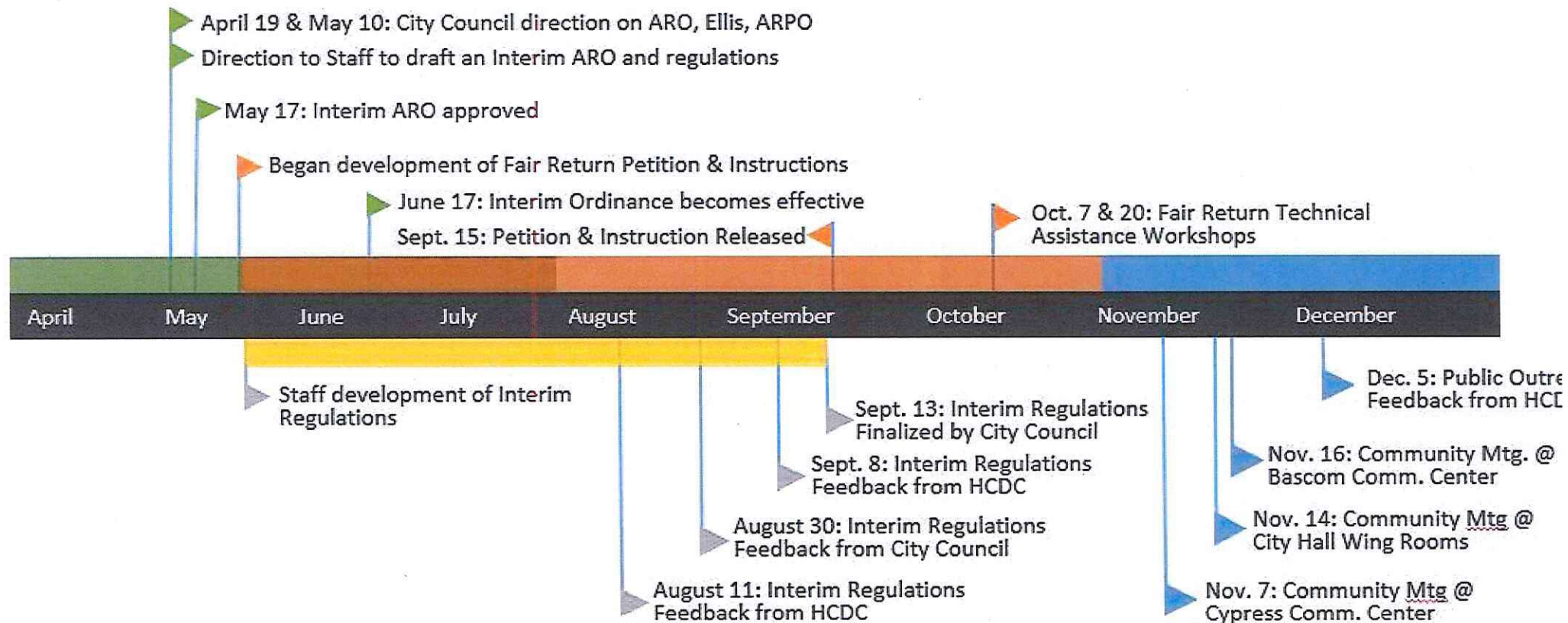
JACKY MORALES-FERRAND
Director, Department of Housing

For questions, please contact Rachel VanderVeen, Rental Rights & Referrals Program Administrator, at (408) 535-8310.

Attachment A: Timeline of work completed to date
Attachment B: Handout for Community Input Meetings
Attachment C: Written comments from Community Meetings



AMENDMENTS TO THE APARTMENT RENT ORDINANCE (Illustrative Purposes Only)



- Initial ARO Council Process
- Interim Regulations
- Fair Return Process Development
- Fully Modified ARO, Ellis, ARPO

Ellis Act Ordinance

State Law allows cities to regulate how ARO apartments are demolished or taken off of the rental market. This law is referred to as the Ellis Act. It allows cities to set the noticing timelines, relocation benefits for tenants, and determine if new apartments should be rent stabilized or not.

1. Which tenants should receive relocation benefits?
Select three.
2. Should some tenants receive additional relocation support because they may be more vulnerable? **Select three.**
3. A relocation benefit package could include a variety of things. Please select the three most appropriate costs when tenants are forced to move. **Select three.**

General Questions:

What kind of assistance or support should the City provide to help Owners and Tenants understand their rights and responsibilities of these three ordinances? **Select two.**

As we continue to work through updating and creating the ARO, Ellis Act and ARPO, what should we keep in mind? What is most important to you? **Post-it!**

Apartment Rent Ordinance Update

Community Outreach & Engagement

This packet contains your materials for tonight's interactive activity.

Tonight you'll have an opportunity to learn about and provide feedback on all three Apartment Rent Ordinance related policies being brought back to the San José City Council.

Select an Ordinance to start with. Don't worry—you'll rotate through all of them! Our staff will provide information and answer clarifying questions on the ordinance. You'll have an opportunity to answer the questions that are posted on the walls. Background information and the specific questions we're seeking input on are provided in this program.

Use your stickers to indicate your answers/preferences to the questions. If you have other thoughts or things we should know, write it on a post-it. All other thoughts can be shared on the comment card in this packet.

Questions? Ask us.

Thanks for your time!

Apartment Rent Ordinance

Registration

The new Apartment Rent Ordinance will require that Owners “register” their apartments with the Housing Department. Registration could be done annually and tied to the payment of ARO fees, or, it could happen when a new tenant moves into the apartment after a vacancy.

Registration will collect the rents being charged in apartments, track banking, and capital improvements. Tracking banking becomes very difficult and costly, especially if registration happens annually.

Questions to answer:

1. Which is more important to you? **Select one.**
2. When should apartments be registered? **Select one.**
3. Would you rather utilize paper or online forms and documents? **Select one.**

In order to ensure registration compliance, we are considering the following consequences for Owners who don’t register their apartments. When Owners don’t comply with the Ordinance the City has to spend more staff time on enforcement, which could trigger higher ARO fees.

4. Select the two strategies that you believe are appropriate and would be most effective in ensuring registration compliance. **Select two.**

Capital Improvements

The City Council directed that a streamlined capital improvement program be available for major improvements.

5. What types of capital improvements are most important? **Select one.**

Anti-Retaliation & Protection Ordinance

Under this Ordinance, in certain circumstances an owner will not be able to give tenants a no-cause eviction, but will still be able to evict them if they violate certain rules. This is called “Good Cause for Eviction” protections. Tenants that damage the building, illegally add roommates, refuse to pay rent, or otherwise violate their lease can still be legally evicted.

Scope

The intention of this Ordinance is to ensure that tenants aren’t evicted for reporting housing code violations or illegal behavior of the Property Owner. Please give us feedback on the scope of the Ordinance.

1. When should a tenant be provided with Good Cause protections? **Select three.**

Causes for eviction

Even if a tenant has Good Cause protections under the ARPO, they can still be evicted if they violate their lease. The list of reasons provided have been taken from other cities that have similar regulations, but these can be changed to fit our local needs.

2. Please select three reasons that you believe are appropriate causes to evict a tenant. **Select three.**

Process

Good landlord-tenant communication is very important. To avoid damaging relationships and facilitate communication between owners and tenants, we’re thinking about how and when tenants should come to the City with concerns and complaints.

3. To receive ARPO protections, should the tenant be required to notify an owner of a Code violation in writing first? **Select one.**

Written Responses Received - ARO (does not include Comment Cards)

1. Which is more important to you?
 - Privacy of landlord and tenant
 - Accountability and rent control aren't possible without accessible info
 - This is not a communist state, this is a capitalist state, not anybody else's business
 - By making it more costly. Using banking encourages owners to take the whole 5% (4 stickers)
 - By charging higher fees you are forcing me to raise rents every year you defeat your own purpose (4 stickers)
 - No regulation I am very against a public registry (1 sticker)
 - Not clear to understand
 - Why "Higher" fees?
 - Registry fee should be split by tenant and landlord
 - Control rent increase every year
 - Banking and rising fees breeds the necessity of taking the full 5%
 - The ability to review... means (each owner his tenants? Or everyone "privacy")
 - Oppose it: It creates conflict because old tenant (low rent) and new tenant (high rent)
2. When should apartments be registered?
 - Simple is best. Just like yearly payment of auto license fees it becomes habitual – not forgotten
 - Never!
 - No registration (12 stickers)
 - What will registry accomplish? How protect renters? – Privacy/rents (2 stickers)
 - Tenants must/should pay their own share of registration fee. To protect them, tenants should pay equal share (5 stickers)
 - Strongly oppose registry – unneeded exposure to create and administer. What is benefit?
 - Every time there is a change in tenants. Need to know if rents fall in allowable range. Must register a type of vacancy as well. For cause evict, no cause evict, voluntary
 - Never – oversight not required
 - Combination of annual plus every time a tenant moves in (1 sticker)
 - Every time there is a termination (voluntary, eviction, etc.)
 - Registry will increase owner's cost but not tenants – both sides should participate in increase program costs
 - A combination of the two. Needs better tracking of 90-day notices
3. The registration process will be available online and in paper. Which process do you think you'd rather use?
 - I prefer online forms and a paper copy at no cost
 - Please make sure forms are updated
 - Privacy of info concerned
 - Needs to be simple. I think electronic would make everybody less anxious
 - More regulations = higher costs
Less = Lower costs

4. Select the two strategies that you believe are appropriate and would be most effective in ensuring registration compliance.

- Just-cause eviction is actually a simpler solution
- Tenants should register with the city
- Registration -> tenant name problematic (**2 stickers**)
- Existing fines work (**1 sticker**)
- 5% a year no carryover or banks = minimal oversight needed
- Owner should pay penalty for not complying
- Rent registry – expose privacy of low-income residents and the status of residents – cannot be implemented
- This proposal is too “Big Brother” and I am the City’s property management. Devalues our properties with overregulation
- Lose ability to raise rent more than 5% till comply (no banking)

5. What types of capital improvements are most important to you? What would you be willing to pay for?

- Seismic retro should be part of safety & security
- Seismic retrofitting should be included in safety and security
- Seismic retrofitting should be included in safety and security
- Since major capital improvements increase the “value” of property which the owner may recoup when he/she sells the property – should tenants bear the costs of these improvements? These costs should be amortized – what % of these costs should be borne by tenants
- Capital improvements offer no choice to owners – for tenants to select what they want to help is outrageously UNFAIR (**4 stickers**)
- None no pass through to tenants

Written Responses Received - ARPO (does not include Comment Cards)

1. When should a tenant be provided with Good Cause protections?
 - Well-intentioned "just cause" laws result in "good neighbors" being forced to tolerate "bad neighbors" or being forced to leave themselves
 - All of them
 - What units need to be registered in the city?
 - When there is evidence of retaliation for asking for repairs
 - All evictions should be for Good Cause
 - All tenants should have good-cause protection. It shouldn't have to be earned by first suffering harassment **(1 sticker)**
 - Never **(1 sticker)**
 - Never **(4 stickers)**
 - Never
 - Always! **(2 stickers)**
 - Always! **(2 stickers)**
 - Always **(1 sticker)**
 - Harassment should be pursued by City as a civil matter **(1 sticker)**
 - When not already a State, Federal or City statute or law. So, never
 - This is an overregulation of our units. These are laws or ordinances in place, why more regulation? It devalues my property
 - Owners need to be able to give tenants a notice to move out without a reason if they are violating the contract or causing problems **(2 stickers)**
 - I do not believe in the Good Cause especially for 2 years
 - I do not think the 2-year is fair – therefore placing stickers does not give support and credence to the questions
 - All these protections exist under current ARO and state law. Redundant and unneeded
 - We need a process for dealing with retaliatory evictions through the RRRP
 - Why San Jose City create a different law to protect tenants in ARO units. I oppose the 2-year protection
 - When the tenant brings up Code issues or asks for repairs
2. Please select three reasons that you believe are appropriate causes to evict a tenant.
 - 1) owner occupation needs to be monitored to ensure that owner/family members truly occupy for at least 1 year
 - If substantial repairs are needed, landlord is supposed to pay for alternative housing
 - Cause nuisance to other tenants (ex. Vacuum at 3 a.m.) **(1 sticker)**
 - Pose danger to other renters (ex: dealing drugs) **(1 sticker)**
 - There are multiple items of repairs to limit them to two and have the top three then it is a shame
 - If safety- or health-related
 - Causes for eviction: definition of lease terms use Tri-City Apt Assn. All of these should be causes
3. To receive ARPO protections, should the tenant be required to notify an owner of a Code violation in writing first?
 - My family can't speak English well and landlords have taken advantage of them when communicating

- No! If tenant is required to give landlord written notice of a code violation, and landlord can quickly issue an eviction notice before City acts
- No ARPO (**4 stickers**)
- Landlords need a signed dated request for repairs
- Any form of cause protects "bad" and dangers renters making a city more dangerous. So 10 most dangerous cities have some form of cause eviction
- Protections for tenants who fear complaining to their landlords (**1 sticker**)
- This should be done in writing and specific from tenants to landlords
- It depends on the concrete situation
- Needs to be in writing – not an option. Maybe an online form with proof process
- ARPO is redundant and unnecessary. All protections are preexisting

Written Responses Received - Ellis Act (does not include Comment Cards)

1. Which tenants should receive relocation benefits?
 - Disabled vets
 - Only if City pays with taxpayers if "right" – should be paid by many not paid by few (**1 sticker**)
 - There should be no relocation benefits (**1 sticker**)
 - Market conditions vacancy factor should be a major consideration; less than 3% consider offering, more than 3% none
 - The Ellis Act was not really discussed 1) a means test of income before giving 2) nothing should be given if owners (family) move in (**1 sticker**)
 - There should not be relocation payment. Draconian practice like this will only lead to reduction in housing supply as property owners leave the business (**2 stickers**)
 - All tenants – Agree
 - If you give the disabled another category in the Ellis - it will make it harder for them to get a rental
 - Anyone who is means tested (**4 stickers**)
 - Tenants receive relocation benefits when landlords need to rebuild the property or remodel when do not provide 60-day in advance notice (**1 sticker**)
 - None of the above relocation payment will increase the cost of running rental business to the point that many property owners will just leave the SJ market, leading to reduced supply
 - Oppose Ellis Act provision – violates basic property rights
2. A relocation benefit package could include a variety of things. Please select the three most appropriate costs when tenants are forced to move.
 - Do not allow any loss of rent-controlled units
 - If rent is under market value no assistance would be provided
 - Flat fee percentage of current rent
 - The immediate costs are hardest to bear, especially with how quickly evictions are completed and how short the no-cause evictions are
 - Storage – Agree
 - Hotel/motel voucher – Agree
 - It is rare that we charge the last month's rent because it complicates the deposit
3. What kind of assistance or support should the City provide to help Owners and Tenants understand their rights and responsibilities of these three ordinances?
 - Tenant packets can be given to owners to be distributed
 - Tenants pick up info from City Housing Dept during office hours
 - Project Blossom – best owner program Helpful! Jody Marshall
 - Whatever the assistance/support, must be in multiple languages. Language access policy

As we continue to work through updating and creating the ARO, Ellis Act and ARPO, what should we keep in mind? What is most important to you? **Post-it!**

- Privacy of financial info
- Questions on charts for ARPO were confusing – no clarity on “Good Cause” – seems to be backwards
- What if you have a low fixed income like SSI or SSA and you have a couple of cats to deal with depression and you are looking for a place that you can afford?
- Fairness
- “Banking” seems not to make sense and should be eliminated
- Consistent and regular community involvement *breakout groups that have landlords/managers and tenants in [civil] conversation
- Just and equitable policy development
- Fees should be split between property owner and tenants
- Better outreach to tenants. It’s always mostly landlords
- Make sure it’s accessible to non-English speakers